

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DAVID ANTHONY PEACE,

Plaintiff,

v.

Case No. 15-cv-481-pp

WARDEN DONALD STRAHOTA, et al.,

Defendants.

**DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR USE OF
PRISON RELEASE ACCOUNT TO PAY PARTIAL FILING FEE (DKT. NO. 6)
AND DIRECTING PLAINTIFF TO PAY INITIAL PARTIAL FILING FEE OF
\$9.62 ON OR BEFORE FRIDAY, OCTOBER 9, 2015**

On May 21, 2015, the court directed the plaintiff, David Anthony Peace, to pay an initial partial filing fee of \$9.62 on or before June 10, 2015. Dkt. No. 11. The plaintiff did not timely pay the fee. Ordinarily, the court would issue an order to show cause directing the plaintiff to explain why he did not pay the initial partial filing fee. *See Thomas v. Butts*, 745 F.3d 309, 312-13 (7th Cir. 2014) (courts required to learn before dismissal whether the prisoner is at fault for the nonpayment of the initial fee). In this case, however, the plaintiff has filed a motion for the use of his prison release account to pay his initial partial filing fee. Dkt. No. 6.

The PLRA requires courts to collect filing fees from “prisoner’s account.” 28 U.S.C. § 1915(b). As stated in *Doty v. Doyle*, 182 F. Supp. 2d 750 (E.D. Wis. 2002):

the courts have found that when a prisoner's general fund has insufficient funds to pay filing fees, both the . . . Wisconsin PLRA . . . and the . . . federal PLRA . . . authorize the courts to order that the money in a prisoner's release account be made available for that purpose. Spence v. Cooke, 222 Wis. 2d 530, 537 (Ct. App. 1998); Spence v. McCaughtry, 46 F. Supp. 2d 861 (E.D. Wis. 1999). (All the same, in deference to the Wisconsin public policy behind release accounts, judges of this district do not routinely look to prisoners' release accounts when they assess initial partial filing fees under the federal PLRA, Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001), although they will do so upon request from the prisoner, as in Spence v. McCaughtry.)

Id. at 751.

The plaintiff has sufficient funds in his release account to pay the initial partial filing fee for this case, and the court respects the plaintiff's choice to use his release funds to pay his initial partial filing fee. The court also will allow the plaintiff additional time to request the disbursement of funds from his release account.

The court **GRANTS** the plaintiff's motion for order allowing use of prison release account to pay initial partial filing fee (Dkt. No. 6).

The court **ORDERS** that, upon the plaintiff's request, the warden at the correctional institution where the plaintiff is incarcerated shall withdraw a total of **\$9.62** from the plaintiff's release account and forward that sum to the Clerk of this Court as the initial partial filing fee in this action. The warden shall make the payment in time for the court to receive it on or before **Friday, October 9, 2015**.

The court will send a copy of this order to the warden at Waupun Correctional Institution.

Dated at Milwaukee this 14th day of September, 2015.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

HON. PAMELA PEPPER
United States District Judge